

Exhibit 2 - Jacob Nocon Deposition Excerpts



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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TESLA, INC., a Delaware
Corporation,

Plaintiff,

vs.

Case No: 3:18-cv-00296-LRH-CBC

MARTIN TRIPP, an individual,

Defendant.

MARTIN TRIPP, an individual,

Counterclaimant,

vs.

TESLA, INC., a Delaware
Corporation,

Counterdefendant.

VIDEOTAPED DEPOSITION OF

JACOB NOCON

TAKEN ON
FRIDAY, MAY 17, 2019
9:01 A.M.

COURTYARD CONFERENCE CENTER
FOUR SEASONS CONFERENCE ROOM
4320 EL CAMINO REAL
PALO ALTO, CALIFORNIA 94022

1 identifying which tableau dashboards those could
2 have been taken from, and then seeing what -- which
3 particular employees conducted queries at the times
4 that those values would have matched what was in the
5 article, and that was tied to Mr. Tripp.

6 **Q. Thank you.**

7 **Did that process connect any other Tesla**
8 **employees to the information of the Business Insider**
9 **article -- articles other than Mr. Tripp?**

10 A. To the best of my recollection, the -- the
11 particular pieces of data that was published were
12 only queried and only would have been seen by Mr.
13 Tripp, based on the times that we identified.

14 **Q. And you participated in an interview of**
15 **Mr. -- interviews of Mr. Tripp on June 14th and June**
16 **15th; is that correct?**

17 A. Yes, that's correct.

18 **Q. Who else participated in those interviews?**

19 A. Nick Gicinto -- well, on the 14th, it was
20 myself, Nick Gicinto, and Imari Henderson, who is
21 from the Human Resources department.

22 **Q. Okay. And was that -- were there**
23 **different people in attendance in the June 15th**
24 **interview?**

25 A. On the 15th, again, to the best of my

1 A. I think that we ran it to ground as best
2 we could.

3 Part of the problem with -- with the
4 searches that we were doing in Splunk is -- again,
5 I'm not highly technical, but my understanding is
6 that the query only takes place when there's enough
7 bandwidth on the system in order for it to run. So
8 it's not going to catch 100 percent of every single
9 instance of that query being run.

10 So my understanding is that we had a
11 decent amount of data to work with, we had some
12 queries we were able to identify, but we don't know
13 if we got it 100 -- 100 percent.

14 Q. I guess what I'm trying to understand,
15 sir, is it sounds like the Splunk search determined
16 that users other than Mr. Tripp were making similar
17 inquiries into the system.

18 Did you identify those other users and why
19 they were making those inquiries?

20 A. I don't know if it's accurate to say it
21 was other users that were making inquiries. What we
22 had identified were that other systems, other
23 computers, had been used to run very similar
24 queries.

25 And so yes, we identified some of those

1 computers and we identified some other generic, you
2 know, user accounts and devices that are used in the
3 assembly line where those queries had been run.

4 **Q. Did you determine that Mr. Tripp had made**
5 **those other queries?**

6 **A.** I think that it's very difficult to say
7 who actually ran the query.

8 You know, in certain instances we know
9 that his profile was used in order to run the query.
10 On the generic accounts, you know, it's not tied to
11 anybody in particular.

12 So, you know, to say that -- I think it's
13 impossible to tell who actually ran some of these
14 things.

15 **Q. So it sounds -- when you say like generic**
16 **accounts, apparently there are machines or terminals**
17 **in the Gigafactory that anybody can walk up to and**
18 **enter search queries without entering like an**
19 **identifying user ID or something like that?**

20 **MS. LIBEU:** Objection to the extent that
21 it calls for speculation, but you can answer.

22 **THE WITNESS:** Yeah, that was my
23 understanding from the investigation. There were
24 workstations within the nonconforming material
25 section of the factory that employees could go onto

1 actually, let's go to paragraph 13.

2 Paragraph 13 says, "Thereafter, Tripp
3 retaliated against Tesla by stealing confidential
4 and trade secret information and disclosing it to
5 third parties and by making false statements
6 intended to harm the company."

7 Did I accurately read paragraph 13, sir?

8 A. Yes, you did.

9 Q. Based on your investigation, what were the
10 -- what was the confidential and trade secret
11 information stolen by Mr. Tripp?

12 A. Well, I'm not a lawyer so, you know, I
13 don't know if I can -- can say precisely what was
14 confidential, what was trade secret, make that --
15 those -- you know, label those items in that
16 particular way.

17 What I can say is that, you know, we knew
18 that Martin Tripp was taking data from the
19 manufacturing operating system regarding scrap rates
20 on certain items produced at the Gigafactory and
21 providing that information to Linette Lopez, who was
22 outside of the company.

23 We also know that Martin Tripp provided
24 her photographs from inside the company of -- of
25 different items, things that he called out as scrap.

1 He also collected video footage from
2 inside the factory at the request of Linette Lopez.

3 Q. Okay. So I just -- and I want to -- were
4 there any other third parties that Mr. Tripp
5 provided that information to?

6 MS. LIBEU: Objection to the extent it
7 calls for speculation, but you can answer.

8 THE WITNESS: I don't know. I'm -- not
9 that I'm aware of. I know that he did reach out to
10 four different reporters for his statements and his
11 interview, and was in contact with at least two of
12 those reporters: Linette Lopez and Alexandria Sage.

13 Q. And in your capacity as the lead
14 investigator, were you able to identify any third
15 parties other than Linette Lopez that Mr. Tripp
16 provided the information to that you were discussing
17 earlier?

18 A. Can you define "third parties"?

19 Q. Well, the complaint says third parties,
20 and I interpret that to mean people other than
21 Tesla.

22 A. Right.

23 Q. So you testified earlier that Mr. Tripp
24 provided photo of the interior of the Gigafactory,
25 video of the interior of the Gigafactory, and data

1 regarding scrap in the Gigafactory to Linette Lopez,
2 correct?

3 A. That's correct.

4 Q. Did he provide that same information to
5 anybody other than Linette Lopez, based on your
6 investigation?

7 MS. LIBEU: Objection to the extent it
8 calls for speculation, but you can answer.

9 THE WITNESS: I don't recall identifying
10 anybody else.

11 Q. BY MR. FISCHBACH: Okay.

12 So to the extent there was a -- it was a
13 single third party that you as the lead investigator
14 were able to identify as receiving this information,
15 specifically Linette Lopez?

16 A. That's who Martin Tripp identified as
17 being in contact with, and the person that he
18 reported providing this information to.

19 That said, the Excel spreadsheet that he
20 gave -- that he was using to -- that he was
21 populating with Tesla data was -- was a shared web -
22 - a shared Excel spreadsheet that was up on the
23 cloud, so anybody could have had access to that.

24 And, you know, given the fact that I'm --
25 I don't work for the federal government, you know,

1 we don't have the type of, you know, subpoena power
2 in order to find out who could have accessed that
3 beyond Linette Lopez.

4 Q. Do you -- as the lead investigator, do you
5 have any evidence that anybody other than Linette
6 Lopez accessed that information on the cloud?

7 A. I don't believe so.

8 Q. And, you know, to the extent you can
9 answer -- you might not be able to -- but paragraph
10 13 states that "Mr. Tripp made false statements
11 intended to harm the company."

12 Are you aware of what false statements Mr.
13 Tripp made?

14 A. I think that the investigation showed that
15 some of the information and data that he was
16 providing, specifically the costs, were his
17 estimates that were not in fact, you know, truly
18 reflective of the cost of those items. And so to
19 that extent, yes, that information was false.

20 Q. Okay. And just so I -- I want to make
21 sure I'm identifying the universe of information
22 that Mr. Tripp reportedly gave, or at least made
23 available to third parties.

24 It was photographs of the inside of the
25 Gigafactory, video of the inside of the Gigafactory,

1 and data regarding scrap in the Gigafactory; is that
2 correct?

3 A. Those were three things that he provided.
4 I think he also provided information regarding what
5 he believed were issues involving the cells and
6 modules that are produced at the Gigafactory that go
7 in the battery packs that go in Tesla vehicle.

8 Q. Is that what we've been referring to in
9 this case, containment AR 622?

10 A. So my understanding is that yes, that is
11 part of that. Not all modules are part of that
12 containment.

13 Q. Understood.

14 But again, I just want to make sure I'm
15 identifying the universe of information --

16 A. Sure.

17 Q. -- that based on your -- I want to
18 identify the universe of information that based on
19 your investigation, Mr. Tripp is alleged to have
20 either provided to third parties or made available
21 in the cloud.

22 And now it sounds like it's photos of the
23 inside of the Gigafactory, video of the inside of
24 the Gigafactory, information regarding scrap at the
25 Gigafactory, and information regarding battery

1 you have been providing to Tesla's counsel during
2 your investigation?

3 A. Yes, that's accurate.

4 Q. Going down to paragraph 14 of the
5 complaint. It says, "Tripp admitted to writing
6 software that hacked Tesla's MOS and to transferring
7 several gigabytes of confidential and proprietary
8 Tesla data to entities outside the company. This
9 included dozens of photographs and a video of
10 Tesla's manufacturing systems."

11 Did I read that paragraph correctly, sir?

12 A. I believe so.

13 Q. What -- what software did Mr. Tripp write
14 that hacked Tesla's MOS?

15 A. Well, specifically what we identified
16 during the course of our investigation was the --
17 the SQL query that was written to, in Tripp's words,
18 mine data from MOS.

19 Q. And just so what is "SQL"?

20 A. I'm not sure what SQL stands for.

21 Q. Is that like a database or a -- help me
22 understand. Again, I'm the retired schoolteacher on
23 the jury.

24 What is it?

25 A. Well, again, I'm not a forensic expert,

1 nor am I a coder. But my understanding is is that
2 SQL or SQL is a language that can be used to extract
3 certain pieces of information from a database.

4 In this particular case, it was -- the
5 database was the manufacturing operating system.

6 Q. And that's the MOS referred to here in
7 paragraph 14?

8 A. That's correct.

9 Q. Is it fair to say that SQL is something
10 that can be used to locate and extract data from
11 MOS?

12 A. That's my understanding, yes.

13 Q. Kind of like a Google, but for the MOS in
14 very -- very, very layman terms. I just want to,
15 you know --

16 A. Sure, yes.

17 (Counsel laughing.)

18 Q. BY MR. FISCHBACH: So -- but the -- so the
19 software that Mr. Tripp wrote is -- is -- are those
20 SQL search terms that were then used in MOS?

21 A. I'm not sure. I didn't write this
22 document. I don't know exactly what they're
23 referring to. But what I can say is that the things
24 that we knew -- we identified from our investigation
25 that he wrote were those SQL queries.

1 Q. Anything -- and I appreciate that you
2 didn't draft the complaint, but I'm trying to
3 reconcile your investigation with the allegations in
4 the complaint.

5 A. Sure.

6 Q. Anything else that you can think of that
7 paragraph 14 might be referring to other than those
8 SQL queries?

9 MS. LIBEU: Objection to the extent it
10 calls for speculation, but you can answer.

11 THE WITNESS: Yeah. I can't think of
12 anything, but I'm not sure.

13 Q. BY MR. FISCHBACH: Okay. Thank you.

14 It says, "Tripp admitted to writing
15 software that hacked Tesla's MOS."

16 Did Mr. Tripp have access to the MOS?

17 A. My understanding is that as part of his
18 job function, he did have access to MOS, and part of
19 his job was to write queries in order to extract
20 information.

21 Q. Because when I see the word "hacked"
22 there, it has certain connotations to it.

23 A. Sure.

24 Q. Based on your investigation, did Mr. Tripp
25 access portions of the MOS system that were, you

1 **know, beyond his authority?**

2 **MS. LIBEU:** Objection to the preamble to
3 the question, but you can go ahead and answer.

4 **THE WITNESS:** So I'm not sure, because I
5 don't know exactly what he was able to or supposed
6 to be doing within his job function.

7 That said, I know that part of the query
8 that he was running was looking for different parts
9 throughout the factory. Some of those parts he was
10 either not working on at the time, so it would have
11 exceeded what he needed for his actual job.

12 **Q. BY MR. FISCHBACH:** But other than that,
13 other than him making inquiries are into areas or
14 systems of the Gigafactory that -- not -- not
15 pertinent to his particular job description, can you
16 think of anything else that would fall into this
17 category of him hacking Tesla's MOS?

18 **A.** I don't believe that we uncovered anything
19 else.

20 **Q.** Did you uncover any instances of him using
21 somebody else's credentials to access the MOS?

22 **A.** I would say that we're still not sure
23 about that.

24 Again, I'm not the computer expert, but
25 based on what was found by some of my colleagues,

CERTIFICATE

I, Carli McKenny, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 3rd day of June, 2019.

A handwritten signature in dark ink, appearing to read 'Carli McKenny', is written over a horizontal line.

Carli McKenny